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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,197	02/04/2004	George E. McKedy	3903	4230
23122	7590	05/23/2005	EXAMINER	
RATNERPRESTIA P O BOX 980 VALLEY FORGE, PA 19482-0980			LAWRENCE JR, FRANK M	
			ART UNIT	PAPER NUMBER
			1724	
DATE MAILED: 05/23/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/772,197

Applicant(s)

MCKEDY, GEORGE E.

Examiner

Frank M. Lawrence

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-79 is/are pending in the application.
- 4a) Of the above claim(s) 11-22, 35-39, 52-63 and 74-79 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-10, 23-32, 40-44, 46-49, 64-68 and 70-73 is/are rejected.
- 7) ☐ Claim(s) 6, 33, 34, 45, 50, 51 and 69 is/are objected to.
- 8) ☒ Claim(s) 1-79 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-10, 23-34, 40-51 and 64-73, drawn to an oxygen-absorbing composition, classified in class 252, subclass 188.28.
 - II. Claims 11-22, 35-39, 52-63 and 74-79, drawn to a method of absorbing oxygen from a closed environment, classified in class 95, subclass 138.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product as claimed can be used in a materially different process, such as in the conversion of nitrogen oxides.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Mr. Jim Abruzzo on May 9, 2005 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-10, 23-34, 40-51 and 64-73. Affirmation of this election must be made by applicant in replying to this Office action. Claims 11-22, 35-39, 52-63 and 74-79 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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5. It is suggested that the title be amended to reflect the elected invention by deleting “and method.”

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 2, 3, 8-10, 24, 25, 30-32, 41-43, 47-49, 65-67 and 71-73 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With respect to each of the listed claims, the recited weight percent values within a given claim exclude others within the same claim. For example, in claim 2, if iron is present in an amount of 98 wt. %, the claim recites that the minimum tartrate amount is 3%, giving a total of 101%.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. The definition word “iron” in the claims is taken as one of the iron materials presented in the first full paragraph of page 6 of the specification, but not as non-iron metals such as zinc, copper, and tin.

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10. Claims 1-4, 7-10, 23-26, 29-32, 40-43, 46-49, 64-67 and 70-73 are rejected under 35 U.S.C. 102(e) as being anticipated by Powers (6,558,571).

11. Powers '571 teaches an oxygen-absorbing composition comprising 20-90 wt. % iron, 1-30 wt. % of an inhibited carbon generating compound that can act as an electrolyte, 0.1-20 wt. % of a water absorbing agent, optionally 0.1-5 wt. % of an additional electrolyte, and optionally 3-40 wt. % a dry acid such as tartaric acid ((di)hydrogen tartrate) (see col. 4, line 23 to col. 5, line 9, col. 5, lines 41-54, col. 6, lines 27-35).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

12. Claims 1, 7, 23, 29, 40, 46, 64 and 70 are rejected under 35 U.S.C. 102(b) as being anticipated by Aswell et al. (4,588,561).

13. Aswell et al. '561 teach an oxygen absorbing composition including a dispersed mixture of iron, a carbon dioxide generating composition that can include tartaric acid and a sodium or potassium carbonate that can act as an electrolyte, and a filler such as silica gel (col. 3, line 40 to col. 4, line 31).

14. Claims 1 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Makino (6,306,201).

15. Makino '201 teaches the compound iron tartrate (col. 2, line 24).

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16. Claims 23, 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by the Japanese reference (JP 63-277058 A).

17. JP '058 teaches a deodorant composition comprising a ferrous salt and sodium tartrate or potassium tartrate (dipotassium tartrate) (see abstract).

18. Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Ivanov et al. (4,705,876).

19. Ivanov et al. '876 teach a powder-like iron-sodium tartrate complex (col. 5, lines 16-54).

20. Claims 1, 5, 23, 27, 40, 44, 64 and 68 are rejected under 35 U.S.C. 102(b) as being anticipated by Tsao et al. (4,265,675).

21. Tsao et al. '675 teach a liquid or solid cellulose solvent composition including ferric chloride, sodium tartrate, an oxygen-scavenging agent, and a caustic compound such as sodium hydroxide (claims 1-6, col. 3, lines 35-60).

Allowable Subject Matter

22. Claims 6, 33, 34, 45, 50, 51 and 69 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

23. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The additional references listed on the attached PTO-892 form disclose oxygen scavenging compositions and tartrate compositions.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank M. Lawrence whose telephone number is 571-272-1161.

The examiner can normally be reached on Mon-Thurs 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on 571-272-1166. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frank M. Lawrence
Primary Examiner
Art Unit 1724

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5-11-05